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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 994

GARFIELD TRUST COMPANY, a Corporation,
Petitioner,

v.

THE UNITED STATES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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The petitioner, by its counsel, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered on January 11, 1963. (App., infra, p. 29, R. 52) based on an opinion of the United States Court of Claims promulgated on January 11, 1963. (App., infra, p. 13, R. 39).

OPINION BELOW

The Opinion, Findings of Fact and Conclusion of Law of the United States Court of Claims, promulgated January 11, 1963, (App., infra, p. 13, R. 39-52) are reported in 312 F.2d 751.

JURISDICTION

The judgment of the United States Court of Claims was made and entered on January 11, 1963. (App., infra, p. 29, R. 39 and 52).

The jurisdiction of this Court is invoked under Section 1255, Title 28, United States Code. (62 Stat. 928).

QUESTIONS PRESENTED

1. Whether petitioner, a secured creditor of the bankrupt corporation, Wire Corporation of America, had a first lien on the assets of the debtor corporation.

2. Whether the petitioner's mortgage lien on the assets of the bankrupt corporation was, in a proceeding under the Act Relating to Bankruptcy (Title 11 United States Code), superior and prior in right to the Federal Tax lien claimed by The Director of Internal Revenue for the District of New Jersey under Section 3670 of the 1939 Internal Revenue Code.

3. Whether if the petitioner's lien was superior to and prior in right to the aforesaid tax lien of the Government, the amount of the government tax lien was erroneously and illegally collected by the said Director of Internal Revenue prior to the payment of the full amount due petitioner under its superior lien, prior in right, to the lien of the government.

4. Whether petitioner was entitled to judgment in a suit brought in the United States Court of Claims against the United States to recover $4,576.00 (plus legal interest) of the monies erroneously and illegally collected by the said Director of Internal Revenue and paid over by him to The Treasurer of the United States.

5. Whether the petitioner's suit in the United States Court of Claims was a mere collateral attack on the ac-

tion of the Referee in Bankruptcy in the Matter of Wire Corporation of America, Debtor, as held by the Court below or a direct action correctly, legally and properly brought under Section 1346, Chapter 85, and Section 1491, Chapter 91 of the U. S. Code, to recover for taxes erroneously and illegally collected and the consequent unjust enrichment of the United States.

6. Whether the United States Court of Claims erred by concluding that as a matter of law petitioner was not entitled to recover and in dismissing the petition filed in the Court of Claims.

STATUTES INVOLVED

The Act Relating to Bankruptcy, Title 11 United States Code:

Sec. 104. Debts which have priority. (App., infra, p. 29).

Sec. 702. Application of other provisions. (App., infra, p. 31).

Sec. 706. Definitions, In General. (App., infra, p. 31).

Sec. 707. Creditors; debts; claims. (App., infra, p. 32).

Sec. 711. Exclusive jurisdiction of debtor and property. (App., infra, p. 32).

1939 Internal Revenue Code

Sec. 3670. (App., infra, p. 32).

Title 28, U. S. Code

Sec. 1346, Chapter 85. (App., infra, p. 33).
Sec. 1491, Chapter 91. (App., infra, p. 33).

STATEMENT OF THE CASE

Petitioner is a trust company organized and existing under the laws of the State of New Jersey. During the

years involved in this case it maintained a principal office in the City of Garfield, New Jersey, and engaged in business as a trust company and financing institution. (App., infra, p. 18, R. 39).

The petitioner, since December 7, 1950, held a duly recorded chattel mortgage dated December 7, 1950 in the principal sum of not less than $25,000 on the goods and chattels of Pacific Wire Corporation.

Subsequent to December 7, 1950 the said Pacific Wire Corporation conveyed its assets to Wire Corporation of America, a New Jersey Corporation, subject to the said Garfield Trust Company chattel mortgage (App., infra, p. 18, R. 39).

After the transfer of the assets of Pacific Wire Corporation to the Wire Corporation of America, subject to the said chattel mortgage of Garfield Trust Company, the Wire Corporation of America sustained a fire loss and as a result thereof, the said chattels and goods underlying the said chattel mortgage of Garfield Trust Company were destroyed and the insurance carrier paid to Wire Corporation of America the sum of $160,000 in settlement of the aforesaid fire loss.

On or about March 25, 1953, Wire Corporation of America, being unable to pay its debts as they matured, filed its petition in the District Court of the United States for the Judicial District of New Jersey in proceedings under Chapter XI of the Act of Congress relating to bankruptcy. (App., infra, p. 19, R. 39).

On December 2, 1953, the following order was entered in the United States District Court, District of New Jersey, in the bankruptcy matter of Wire Corporation of America, Debtor, In Proceedings of Arrangement:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In the Matter of

Wire Corporation of America, Debtor

IN PROCEEDINGS OF ARRANGEMENT

ORDER

This matter being opened to the Court by Isadore B. Miller, attorney for the debtor herein, and it appearing to the Court that the Garfield Trust Company of Garfield, New Jersey, did file a secured claim herein in the sum of $23,568.64 and that under the terms and conditions of the amended plan of arrangement, the said Garfield Trust Company is to receive a payment on account thereof in the sum of 50% and the balance thereof to be paid in accordance with the terms and conditions of the said amended plan of arrangement; said lien, however, to be a first lien on the assets of the debtor corporation. It is therefore, on this 2nd day of December, 1953, on motion of the attorney for the debtor,

ORDERED, that Vincent C. Duffy, the disbursing agent herein, be and he is hereby authorized and empowered to pay 50% on the aforesaid claim of the Garfield Trust Company in accordance with the amended plan or arrangement.

s/s William T. Cahill
Referee in Bankruptcy

(App., infra, p. 24, R. 48).

On December 23, 1953, the Referee in Bankruptcy signed an order authorizing the payment of the Federal tax claim of The Director of Internal Revenue, District of New Jersey against the bankrupt, Wire Corporation of America, in the amount of $17,553.44. (App., infra, p. 24, R. 48).

The Receiver and Disbursing Agent in the Matter of Wire Corporation of America, in bankruptcy, paid to The

Director of Internal Revenue, District of New Jersey, the full amount, $17,553.44, of the said Director's claim against the bankrupt. (App., infra, p. 26, R. 50) and the money was paid over to the Treasurer of the United States. (App., infra, p. 27, R. 50).

Petitioner did not receive payment of the $11,784.32 on its secured claim as ordered and directed by the Referee in Bankruptcy on December 2, 1953. (App., infra, p. 27, R. 51).

Petitioner received payments of $7,206.32, leaving a balance due of $4,578.00 plus interest as required by law. (App., infra, p. 27, R. 51).

The assets of Wire Corporation of America, the bankrupt, were exhausted, the petitioner was not paid the balance due it, and the Bankruptcy Estate was closed by order of the Referee in Bankruptcy, leaving the balance of $4,578.00 due and owing to the petitioner and uncollectible. (App., infra, p. 27, R. 51).

Petitioner filed on October 2, 1958 a petition in the United States Court of Claims to recover from the United States of America the sum of $4,578.00 plus six per centum per annum from March 3, 1954, the day that The Director of Internal Revenue for the District of New Jersey paid over to The Treasurer of the United States the tax claim money amounting to $17,553.44 which the District Director had collected from the bankrupt.

The petitioner contended before the Court of Claims that:

1. That petitioner's claim against the bankrupt debtor, Wire Corporation of America, had priority over any claim by the U. S. Director of Internal Revenue for the District of New Jersey or by the United States of America. The plaintiff held a duly recorded chattel mortgage and a first and secured claim. The assets of Pacific Wire Cor-

poration of America had been transferred to Wire Corporation of America (prior to the bankruptcy) subject to the chattel mortgage of the petitioner.

2. That the priority of petitioner's claim had been recognized and upheld in the District Court of the United States for the District of New Jersey by the order of the Referee in Bankruptcy entered on December 2, 1953 ordering and deciding that petitioner be paid $11,784.32, that petitioner had a secured claim and that the secured claim of petitioner was a *first lien on the assets* of the debtor corporation.

3. That the petitioner was entitled to recover because on account of the priority of petitioner's claim, The Director of Internal Revenue, for the District of New Jersey, had erroneously, illegally and improperly collected $17,553.44 from the bankrupt debtor, before petitioner was paid the full amount of its claim.

4. That the United States of America by reason of the illegal collection by the U. S. Director of Internal Revenue for the District of New Jersey had been unjustly enriched at the direct expense of and to the detriment of petitioner.

On January 11, 1963, the United States Court of Claims concluded that, as a matter of law, the petitioner was not entitled to recover and dismissed the petition (App., infra, p. 29, R. 52).

The basis of the opinion and decision of the Court of Claims was that the petitioner's suit against the United States was a collateral attack on the decision and order of the Referee in Bankruptcy. The Court held that petitioner's only recourse was "by appeal to the District Judge, and from his decision to the Court of Appeals, and by certiorari to the Supreme Court" and that the petitioner could not collaterally attack the action of the Referee in Bankruptcy in the United States Court of Claims.

Petitioner contends that Section 1346, Chapter 85 (App., infra, p. 33) and Section 1491, Chapter 91 (App., infra, p. 33) of Title 28, U. S. Code constitute the basis for federal jurisdiction and the basis for the jurisdiction of the United States Court of Claims in the action filed by petitioner in the Court of Claims.

REASONS FOR GRANTING THE WRIT

1. The Court below held that the suit by petitioner was a mere collateral attack on the action of the Referee in Bankruptcy and that the petitioner's only remedy was an appeal to the District Judge, the Court of Appeals and by certiorari to this Court. The Court of Claims failed to pass on or discuss the point that petitioner's secured mortgage lien was superior to the lien or claim of the United States for taxes.

With all due respect to the learned Court below, we think that it overlooked the fact that the Referee in Bankruptcy entered an order in the case fully sustaining petitioner's position in the Bankruptcy proceeding; in the Court of Claims; and in this Court. On December 2, 1953, the said Referee entered an order in the United States District Court for the District of New Jersey holding that petitioner had filed a secured claim and that petitioner's lien under said claim was "to be a first lien on the assets of the debtor corporation". (App., infra, p. 24, R. 48).

The petitioner did not receive all its money because the Receiver in Bankruptcy ignored the order of the said Referee that the claim of the petitioner was a first and secured claim and that the order of payment to petitioner was entered prior to any order of payment to The Director of Internal Revenue. The Receiver waited to complete the payments to petitioner until after the assets of the bankrupt debtor were gone and then it was too late to pay the balance, $4,578.00, of the money due peti-

tioner under the order of the said Referee in Bankruptcy. (App., infra, p. 27, R. 51).

How could the petitioner appeal the order of the Referee when the order itself affirmed the petitioner's position? Moreover, an appeal would have been moot because the assets of the bankrupt were gone. Nothing could have been recovered on appeal. Petitioner's only remedy was to file, against the United States, a suit in the United States Court of Claims under Title 28, U. S. Code, Chapter 85, Section 1346 and Chapter 91, Section 1491 for recovery on the unpaid portion of its claim.

2. Under the present status of the law, the order of the Referee in Bankruptcy, entered on December 2, 1953, holding that the petitioner was a secured creditor with a first lien on the assets of the bankrupt corporation, was lawful, correct and proper. The leading case on this proposition is United States v. Sampsell 153 F. 2d 731 (C.A. 9, 1946) in which the Court of Appeals held that, in a bankruptcy proceeding, a mortgage lien which precedes in time the Government's tax lien under Section 3670 of the 1939 Internal Revenue Code, is prior in right and superior to the tax lien of the Government. The Court pointed out that the priorities, under Section 104 of the Act Relating to Bankruptcy, Title 11 United States Code, govern distribution of the assets of a bankrupt's estate. (For the provisions of Section 104 of the Bankruptcy Act please see App., infra, p. 29, and for the provisions of Section 3670 of the 1939 Internal Revenue Code see App., infra, p. 32).

Accordingly, the collection herein by the U. S. District Director of Internal Revenue of the Government's full tax claim from the bankrupt's estate was unlawful, illegal and improper, as was the payment of the full amount of the claim by the District Director to The Treasurer of the United States.

3. The suit by the petitioner in the Court of Claims to recover $4,578.00, plus interest required by law, from the United States was a suit to recover on account of the erroneous and illegal collection by the U. S. Director of Internal Revenue for the District of New Jersey and the unlawful payment over of the monies collected by the said Director to The Treasurer of the United States. It is respectfully submitted that the suit was a direct action to recover and not a collateral attack on the ruling of the Referee in Bankruptcy as erroneously held by the Court of Claims.

Since the petitioner's action in the United States Court of Claims involved the recovery of an Internal Revenue tax alleged to have been erroneously and illegally collected, the United States Court of Claims had jurisdiction under Section 1346, Chapter 85, Title 28, U. S. Code. (App., infra, p. 33).

Furthermore, since the petitioner's suit was also founded upon and involved the provisions of Sections 104, 702, 706, 707 and 711 of the Act Relating to Bankruptcy, Title 11, U. S. Code (App., infra, p. 29), the United States Court of Claims also had jurisdiction under Section 1491, Chapter 91, Title 28, U. S. Code. (App., infra, p. 33).

We think and respectfully suggest that under the circumstances and the law of this proceeding, the cases cited by the Court of Claims (Stoll v. Gottlieb, 305 U. S. 165 (1938); Chicot County Dist. v. Bank, 308 U. S. 371 (1940); and Dowell v. Applegate, 152 U.S. 327,340) are not in point.

4. The opinion and decision of the Court below is, in effect, in conflict with the decision of the United States Court of Appeals for the Ninth Circuit in United States v. Sampsell, 153 F.2d 731, supra, discussed herein above. The decision of the Court of Claims is also contra to the

specific provisions of the above cited Federal statutes conferring jurisdiction upon the United States Court of Claims.

If the petitioner was a secured creditor and its lien was superior to that of the Government's tax lien under the decision of the Court in United States v. Sampsell, supra, then the Government's claim was erroneously and illegally collected from the bankrupt and the Court of Claims was the proper tribunal in which to bring the action for recovery under Section 1346, Chapter 85, Title 28 U. S. Code, supra, and Section 1491, Chapter 91, Title 28, U. S. Code, supra. The erroneous and illegal collection by the District Director of Internal Revenue created a claim against the the United States which we respectfully submit was meritorious.

Moreover, by reason of the erroneous and illegal collection, the United States was erroneously, unlawfully and unjustly enriched at the expense of and detriment to the plaintiff.

Petitioner is entitled to recovery on the theory of the unjust enrichment of the United States as well as under the theory of an erroneous and illegal collection by the Director of Internal Revenue. Monies may be recovered from the United States for its unjust enrichment. Wisconsin Central Railroad Co. v. United States, 164 U. S. 190, 212.

The Court below failed to follow its own decision in Wisconsin Central Railroad Co. v. U. S. 27 C. Cls. 440, in which the Court states in part as follows at page 469 of 27 C. Cls.:

> "The claimant is entitled to recover for the moneys withheld from it because of an overpayment made to Phillips & Colby Construction Co., prior to the time when it, the claimant, obtained possession of the road and became a mail carrier for the Post Office Department."

It is respectfully submitted that the issues herein now before this Court involve substantial and important questions of Federal Tax law and Federal Bankruptcy law which should be finally settled by this Court to insure orderly and proper collection of Federal Tax Claims in Bankruptcy proceedings and to protect the rights of secured creditors who have first liens on the assets of a bankrupt's estate.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

LLEWELLYN A. LUCE
937 Munsey Building
Washington, D. C.

Counsel for Petitioner

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 442-58

(Decided January 11, 1963)

GARFIELD TRUST COMPANY v. THE UNITED STATES

Lewellyn A. Luce for plaintiff.

Joan T. Berry, with whom was *Acting Assistant Attorney General Joseph D. Guilfoyle*, for defendant. *Frances L. Nunn* was on the briefs.

OPINION

WHITAKER, *Judge*, delivered the opinion of the court:

Plaintiff's petition asks recovery of the sum of $4,578.00 with interest from the United States. The basis of the claim is the unjust enrichment of the United States at the direct expense and to the detriment of the plaintiff. The facts, as sipulated by the parties, are these:

Plaintiff, a New Jersey trust company and financing institution, has held, since December 7, 1950, a duly recorded chattel mortgage of that date, in the principal sum of "not less than" [sic] $25,000 on goods and chattels of Pacific Wire Corporation. Subsequent to December 7, 1950, Pacific Wire transferred to the Wire Corporation of America all of its assets, subject to the chattel mortgage. The Wire Corporation, having sustained a fire loss which destroyed the goods and chattels underlying the chattel mortgage, collected from the insurance carrier $160,000 in settlement thereof.

On March 25, 1953, Wire Corporation, being unable to pay its debts as they matured, filed its petition in the

District Court of the United States for the Judicial District of New Jersey under Chapter XI of the Act of Congress relating to bankruptcy. After payment in full of administration expenses, the petition proposed, *inter alia*, an arrangement for paying all general unsecured creditors, whose claims came into existence after the debtor corporation was formed, 50 percent in cash upon confirmation, and the balance of 50 percent, payable 25 percent one year after the confirmation date and 25 percent two years after the confirmation date, to be evidenced by promissory notes. The business of the debtor was to continue.

On May 28, 1953, the Director of Internal Revenue filed with the Referee in Bankruptcy proof of the tax claim of the United States in the amount of $15,700.80 with interest, covering withholding taxes and FUTA taxes for certain periods in 1952 and 1953.

On October 27, 1953, plaintiff filed in the District Court proof of its secured claim. On December 2, 1953, the District Court entered an order authorizing the Receiver to pay 50 percent of plaintiff's claim, the balance to be paid in accordance with the terms and conditions of the amended plan of arrangement, the lien of the chattel mortgage, however, to be a first lien on the assets of the debtor corporation.

On December 23, 1953, the Referee signed an order directing the Receiver to pay to the Director of Internal Revenue the sum of $17,553.44, the total amount due the United States, which was paid by voucher dated March 3, 1954.

Subsequently, the Receiver paid plaintiff, in three installments, a total of $7,206.32 on the amount of $11,784.32 due plaintiff in cash under the order by the Referee dated December 2, 1953, leaving a balance due on the cash payment of $4,578.00 plus interest.

The stipulation of facts, in section 4, recites:

> A Receiver was appointed. On July 14, 1953, said Receiver filed "Receiver's Final Report and Petition for Allowances" which showed that there was $160,-686.75 available for distribution to the creditors of Wire Corporation of America.

On January 30, 1956, the Referee signed an "Order Closing Estate", which reads as follows:

> It appearing to the Court that the above named debtor filed a petition under Chapter XI of the Bankruptcy Act, and that its plan of arrangement was confirmed on the 14th day of July, 1953, and
>
> It further appearing that all cash payments under the plan have been made and the Receiver having filed his final report and account showing all funds disbursed,
>
> It is on this 30th day of January, 1956 ORDERED that the report and account of the Receiver be and the same is he reby approved and that the Receiver be and he is hereby discharged of his trust and his bond cancelled, and
>
> It is further ORDERED that the matter be closed.
>
> Referee in Bankruptcy

There are no further assets of Wire Corporation with which to pay plaintiff the balance due and to become due.

As shown by the stipulation of facts, plaintiff made no protest to the District Judge, or otherwise attacked in the district court the orders disbursing the funds of the estate or the "Order Closing Estate." Consequently, the Order of the Referee was a final and conclusive adjudication of the rights of all parties with notice of the proceedings before the Referee and who had filed their claims therein, and was *res judicata* as to all issues presented or which could have been presented in those proceedings. It cannot be collaterally attacked in any other tribunal. *Stoll* v.

Gottlieb, 305 U.S. 165 (1938); *Chicot County Dist.*, v. *Bank*, 308 U.S. 371 (1940).

In the *Stoll* case the Federal District Court, in a reorganization proceeding, had entered an order cancelling a guaranty on corporate bonds, and plaintiff's challenge of the jurisdiction of the bankruptcy court to cancel the guaranty was overruled. The Supreme Court held that the bankruptcy court's decision on the issue of its jurisdiction to cancel the guaranty was *res judicata* and could not be collaterally attacked in a State court suit on the guaranty by plaintiff.

In *Chicot County Dist.*, v. *Bank*, *supra*, the bank brought suit in the District Court for the Eastern District of Arkansas to collect on some bonds of the Chicot County District, the bank's rights in which had been adjudicated by the same district court sitting in bankruptcy. In this suit the district court held that its former order in the bankruptcy proceedings were void because it was based on a statute subsequently declared unconstitutional by the Supreme Court. The Circuit Court of Appeals affirmed, but the Supreme Court reversed on the ground that the bank had not attacked the validity of the statute in the bankruptcy proceedings. At page 375 it said:

> * * * As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid. There was no attempt to review the decree. If the general principles governing the defense of *res judicata* are applicable, these bondholders, having the opportunity to raise the question of invalidity, were not the less bound by the decree because they failed to raise it. *Cromwell* v. *County*

of Sac, 94 U.S. 351, 352; *Case* v. *Beauregard*, 101 U.S. 688, 692; *Baltimore Steamship Co.* v. *Phillips*, 274 U.S. 316, 319, 325; *Grubb* v. *Public Utilities Comm'n*, 281 U.S. 470, 479.

The foregoing opinion cited *Stoll* v. *Gottlieb*, 305 U.S. 165. In that case, in an opinion by Mr. Justice Reed, the Court quoted with approval the following from *Dowell* v. *Applegate*, 152 U.S. 327, 340:

> But that was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court.

It is apparent from the Supreme Court's opinions in the above cases that the action of the Referee in Bankruptcy was a final adjudication the rights of the parties and cannot be collaterally attacked in this court. If the bank was dissatisfied with the Referee's orders in the Chapter XI proceedings, its only recourse was by appeal to the District Judge, and from his decision to the Court of Appeals, and by certiorari to the Supreme Court. It cannot collaterally attack his action in this court.

Furthermore, it does not appear from the stipulation of facts that the payment in full of the United States tax claim so exhausted the funds of the bankrupt estate that there were not available funds sufficient to pay 50 percent of plaintiff's claim, as ordered, inasmuch as it appears from the Receiver's "Final Report and Petition for Allowances" that there was available for distribution to the creditors of Wire Corporation the sum of $160,686.75. To whom this was disbursed, we do not know. Plaintiff has, therefore, failed to show that the payment of the claim of the Director of Internal Revenue was

responsible for the failure to pay to it the sum which the Referee ordered the Receiver to pay in his order of December 2, 1953.

Plaintiff's petition is, accordingly, dismissed.

DAVIS, *Judge;* DURFEE, *Judge;* LARAMORE, *Judge;* and JONES, *Chief Judge,* concur.

FINDINGS OF FACT

The court, having considered the evidence, the stipulation of facts entered into between the parties, and the briefs of counsel, makes findings of fact as follows:

1. The plaintiff is a trust company organized and existing under the laws of the State of New Jersey, with its principal office and place of business located in the City of Garfield, State of New Jersey. At all times mentioned in this petition and at the present time the plaintiff was and is engaged in business as a trust company and as a financing institution.

2. The plaintiff, since December 7, 1950, has held a duly recorded chattel mortgage dated December 7, 1950, in the principal sum of not less than $25,000 on the goods and chattels of Pacific Wire Corporation.

Subsequent to December 7, 1950, the said Pacific Wire Corporation conveyed its assets to Wire Corporation of America, a New Jersey Corporation, subject to the said Garfield Trust Company chattel mortgage.

After the transfer of the assets of Pacific Wire Corporation to the Wire Corporation of America, subject to the said chattel mortgage of Garfield Trust Company, the Wire Corporation of America sustained a fire loss and as a result thereof, the said chattels and goods underlying the said chattel mortgage of Garfield Trust Company were destroyed and the insurance carrier paid to Wire Corporation of America the sum of $160,000 in settlement of the aforesaid fire loss.

On or about March 25, 1953, Wire Corporation of America, being unable to pay its debts as they matured, filed its petition in the District Court of the United States for the Judicial District of New Jersey in proceedings under Chapter XI of the Act of Congress relating to bankruptcy. Said petition provided in pertinent part as follows:

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
JUDICIAL DISTRICT OF NEW JERSEY

In Proceedings for an Arrangement

No. B 129 - 53

In the matter of

WIRE CORP. OF AMERICA, Debtor

PETITION IN PROCEEDINGS UNDER
CHAPTER XI

To the Honorable Presiding Judge of the District Court of the United States for the Judicial District of New Jersey

THE PETITION of Wire Corp. of America, a corporation engaged in the business of fabrication and manufacture of wire and wire products, which corporation has not been known by any other name or trade name for the past six years.

RESPECTFULLY REPRESENTS:

1. Your petitioner is a business *corporation organized and existing under the laws of the State of New Jersey and has had its principal office and its principal place of business at 264 21st Avenue, Paterson, New Jersey within the above judicial district, for a longer portion of the six months immediately

* Moneyed, Business or Commercial.

preceding the filing of this petition than in any other judicial district.

2. †No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

None

3. Your petitioner is unable to pay its debts as they mature, and proposes the following arrangement with its unsecured creditors:

A. To pay present administration expenses in full:

B. The general unsecured creditors to be divided into two groups as follows:

Group I

To pay all general unsecured creditors whose claims came into existence after the formation of the debtor corporation in full as follows: 50% in cash upon confirmation and the balance of 50% payable 25% one year after date of confirmation and 25% two years after confirmation as evidenced by promissory notes.

Group II

To pay upon confirmation to holders of notes made by the debtor corporation payable to Pacific Wire Corporation and by it endorsed to creditors of Pacific Wire Corporation the amount of the notes matured and the balance thereof as they mature or to pay upon confirmation to creditors in Group II 50% in cash of all notes matured or unmatured.

C. The business of the debtor to be continued.

4. The schedule hereto annexed, marked Schedule A, and verified by the oath of the undersigned officer of your petitioner, contains a full and true statement of all its debts, and, so far as it is possible to ascertain, the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to bankruptcy.

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† If Bankruptcy proceeding is pending and this petition is brought under Chapter XI, Section 321, strike out this allegation and recite proceedings heretofore had.

5. The schedule hereto annexed, marked Schedule B, and verified by the oath of the undersigned officer of your petitioner, contains an accurate inventory of all its property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

6. The statement hereto annexed, marked Exhibit 1, and verified by the oath of the undersigned officer of your petitioner, contains a full and true statement of all its executory contracts, as required by the provisions of said Act.

7. The statement hereto annexed, marked Exhibit 2, and verified by the oath of the undersigned officer of your petitioner, contains a full and true statement of its affairs, as required by the provisions of said Act.

WHEREFORE your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XI of the Act of Congress relating to bankruptcy.

WIRE CORP. OF AMERICA
Petitioner

By
Edwin Goldman
President of said corporation
Attorney
Isadore B. Miller

(SEAL)

3. On May 28, 1953, the Director of Internal Revenue, filed with the Referee in Bankruptcy proof of the tax claim of the United States as follows:

IN THE COURT OF NEW JERSEY

In the matter of

WIRE CORPORATION OF AMERICA
264 21st Avenue
Paterson, New Jersey

Index of Docket No.

In ARRANGEMENTS CHAPTER XI
CLAIM OF UNITED STATES

State of New Jersey)
County of Essex)

Bruce E. Lambert, Director of Internal Revenue of Newark, New Jersey, a duly authorized agent for the United States in this behalf being duly sworn, deposes and says:

1. That corporation above-named, is justly and truly indebted to the United States in the sum of $15,700.80 with interest thereon as hereinafter stated.

2. That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of tax Statute Involved	*Year of Taxable Period*	*Amount of Tax*	*With int. @ 6% per annum beginning*
WITHHOLDING	9/30/52	$5411.46	10/1/52
"	12/31/52	7961.05	2/1/53
FUTA	1952	2328.29	2/1/53

SUBJECT TO CLAIM BEING AMENDED

3. That no part of said debt has been paid, but that the same is now due and payable at the office of the Director of Internal Revenue, Newark, N.J.

4. That there are no set-offs or counterclaims to said debt.

5. That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon.

6. That said debt has priority, and must be paid in full in advance of distribution to creditors, as and to the extent provided in Section 64 or Section 659 of the Bankruptcy Act. Section 3466 of the Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of every executor, administrator, assignee or other person who fails to pay the claim of the United States in accordance with their priority.

Sworn and subscribed to before
me this 28th day of May, 1953

John J. Ritz
Internal Revenue Agent

Dated this 28th day of May 1953
Thos. C. Smith
Director

4. A Receiver was appointed. On July 14, 1953, said Receiver filed "Receiver's Final Report and Petition for Allowances" which showed that there was $160,686.75 available for distribution to the creditors of Wire Corporation of America.

5. On or about October 27, 1953, Garfield Trust Company, the plaintiff, filed in the District Court of the United States for the Judicial District of New Jersey proof of its secured claim (the said chattel mortgage referred to hereinabove, dated December 7, 1950, in Passaic County Register's Office in Book K-14, page 368 in the principal sum of $25,000) against Wire Corporation of America.

6. On December 2, 1953, the following order was entered in the United States District Court, District of New Jersey, in the bankruptcy matter of Wire Corporation of America, Debtor, In Proceedings of Arrangement:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In the Matter of

WIRE CORPORATION OF AMERICA, Debtor

IN PROCEEDINGS OF ARRANGEMENT

ORDER

This matter being opened to the Court by Isadore B. Miller, attorney for the debtor herein, and it appearing to the Court that the Garfield Trust Company of Garfield, New Jersey, did file a secured claim herein in the sum of $23,568.64 and that under the terms and conditions of the amended plan of arrangement, the said Garfield Trust Company is to receive a payment on account thereof in the sum of 50% and the balance thereof to be paid in accordance with the terms and conditions of the said amended plan of arrangement; said lien, however, to be a first lien on the assets of the debtor corporation. It is therefore, on this 2nd day of December 1953, on motion of the attorney for the debtor,

ORDERED that Vincent C. Duffy, the disbursing agent herein, be and he is hereby authorized and empowered to pay 50% on the aforesaid claim of the Garfield Trust Company in accordance with the amended plan or arrangement.

/s/ WILLIAM T. CAHILL
Referee in Bankruptcy

7. On December 23, 1953, the Referee signed the following Order authorizing payment of $17,553.44 to the Director of Internal Revenue:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In the matter of

WIRE CORPORATION OF AMERICA,
a New Jersey corporation, Debtor

In Proceedings for an Arrangement under Chapter XI of the Bankruptcy Act

ORDER

This matter having come before the court on the motion of the debtor as to why the claims filed herein by the United States of America should not be re-examined and reduced, and it appearing that the parties have agreed upon the amounts due to the United States of America as hereinafter set forth:

It is on this 23rd day of December, 1953, on motion of David Stoffer, of counsel for the debtor, ORDERED that Vincent C. Duffy, Receiver of the debtor Wire Corporation of America pay to the Director of Internal Revenue the sum of $17,553.44, which is the aggregate of the following liabilities of the debtor to the United States of America:

Withheld taxes for July, August and September 1952	$5,411.46
Interest on the previous item from October 1, 1952 to March 26, 1953	157.83
Withheld taxes for October, November and December 1952	7,961.05
Interest on the previous item from February 1, 1953 to March 26, 1953	72.95
Federal Unemployment Tax for the year 1952 after credit as allowed by law on the payment of $2,369.16 to the New Jersey Division of Employment Security	450.15
	$14,053.44
Payment by debtor on account	1,500.00
	$12,553.44

Balance brought forward	$12,553.44
Balance due on promissory notes of the debtor payable to the order of Pacific Wire Corporation, endorsed by latter and held by the United States of America, which filed against Pacific Wire Corporation in the Office of the County Clerk of Passaic County the following liens to be cancelled upon the receipt of payment hereunder	$5,000.00
Book 7, Page 593, dated 9/12/51, recorded 9/13/51, W.T. Tax $2854.82	
Book 8, page 111, dated 11/21/51, recorded 11/23/51, W.T. Tax $3417.86	
Book 8, page 355, dated 2/25/52, recorded 2/26/52, W.T. Tax $1054.77	
Total due United States of America	$17,553.44

Referee in Bankruptcy

Consent is given to the entry of the foregoing order.

William F. Tompkins
United States Attorney

By:
Jerome D. Schwitzer
Assistant United States Attorney
Isadore B. Miller
Attorney for Debtor

8. Thereafter one Vincent C. Duffy, Receiver and disbursing agent in the bankruptcy proceedings in the Matter of Wire Corporation of America, Debtor, paid to the Director of Internal Revenue for the District of New Jersey the sum of $17,553.44. There is on file in the office of the Clerk of the United States District Court, District of New Jersey, Canceled Voucher No. 68, signed by Vincent C. Duffy, Receiver, drawn on January 4, 1953, at Paterson, N.J., payable to the order of Director of Internal Revenue in the sum of $17,553.44. It bears the following endorsement:

Pay to the Order of
any Federal Reserve Bank
or Branch or General Depositary
For Credit to the
Treasurer of the United States
Mar. 3, 1954
Internal Revenue Collections
Director of Internal Revenue
Newark, New Jersey

It bears the perforated cancellation stamp, "3-4-54".

9. Subsequently the said Vincent C. Duffy, Receiver and disbursing agent in the Matter of Wire Corporation of America, Debtor, has paid to the plaintiff in three payments the sum of $3,431.07, $2,575.25 and $1,200, or a total of $7,206.32, on the amount of $11,784.32 due the plaintiff herein under the aforesaid order by the Referee in Bankruptcy dated December 2, 1953, in the bankruptcy matter of Wire Corporation of America in the District Court of the United States, District of New Jersey, leaving a balance due of $4,578.00, plus interest as required by law.

10. There are no further assets of Wire Corporation of America in bankruptcy, with which to pay unto the plaintiff the balance of $4,578.00 due on its claim plus interest as required by law.

The final payment of $1,200 on plaintiff's claim referred to hereinabove was made to plaintiff by the aforesaid Vincent C. Duffy, Receiver and disbursing agent in the matter of Wire Corporation of America, Debtor, on the 22nd day of May, 1957 and since the assets of Wire Corporation of America are exhausted, plaintiff is unable to collect the balance due under its claim in the amount of $4,578.00 pursuant to the order entered by the Referee in Bankruptcy in the United States District Court, District of New Jersey, on December 2, 1953.

11. The Director of Internal Revenue for the District of New Jersey is the duly appointed, designated and acting officer of the United States and, the said Director of Internal Revenue paid to the Treasurer of the United States on or about March 3, 1954, the sum of $17,553.44.

12. On January 30, 1956, the Referee signed the following Order Closing the Estate:

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In the matter of

WIRE CORP. OF AMERICA, Debtor

In Proceedings under Chapter XI

ORDER CLOSING ESTATE

It appearing to the Court that the above named debtor filed a petition under Chapter XI of the Bankruptcy Act, and that its plan of arrangement was confirmed on the 14th day of July, 1953, and

It further appearing that all cash payments under the plan have been made and the Receiver having filed his final report and account showing all funds disbursed.

It is on this 30th day of January, 1956 ORDERED that the report and account of the Receiver be and the same is hereby approved and that the Receiver be and he is hereby discharged of his trust and his bond cancelled, and

It is further ORDERED that the matter be closed.

Referee in Bankruptcy

13. No protest or attack upon the Order Closing the Estate was or has since been made by Garfield Trust Company.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover and its petition is dismissed.

The following sections of the Act Relating to Bankruptcy, Title 11 United States Code, provide in pertinent part:

Sec. 104. Debts which have priority

(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary and expense fund; the filing fees paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of Title 18, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State; the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow: *Provided, however*, That where an order is entered in a proceeding under any chapter of this title directing that bankruptcy be proceeded with,

the costs and expenses of administration incurred in the ensuing bankruptcy proceeding shall have priority in advance of payment of the unpaid costs and expenses of administration, including the allowances provided for in such chapter, incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any; (2) wages and commissions, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; and for the purposes of this clause, the term "traveling or city salesman" shall include all such salesmen, whether or not they are independent contractors selling the products of services of the bankrupt on a commission basis, with or without a drawing account or formal contract; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under chapter 9 of Title 18, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And provided further*, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [1] entitled to priority, and rent owing to a

[1] So in original. Probably should read "is".

landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy. As amended July 30, 1956, c. 784, Sec. 1, 70 Stat. 725; July 28, 1959, Pub. L. 86-110, Sec. 3, 73 Stat. 260.

CHAPTER 11.—ARRANGEMENTS

* * * *

Sec. 702. Application of other provisions

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. * * * July 1, 1898, c. 541, Sec. 302, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 905.

SUBCHAPTER II—DEFINITIONS

Sec. 706. In general

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his unsecured debts, upon any terms;

(2) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(3) "debtor" shall mean a person who could become a bankrupt under section 22 of this title and who files a petition under this chapter;

(4) "executory contracts" shall include unexpired leases of real property; and

(5) "petition" shall mean a petition filed under this chapter by a debtor proposing an arrangement. July 1, 1898, c. 541, Sec. 306, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 906.

Sec. 707. Creditors; debts; claims

Unless inconsistent with the context and for the purposes of an arrangement providing for an extension of time for payment of debts in full and applicable exclusively to the debts to be extended—

(1) "creditors" shall include the holders of all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent; and

(2) "debts" or "claims" shall include all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent. July 1, 1898, c. 541, Sec. 307, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 906.

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SUBCHAPTER III—JURISDICTION, POWERS, AND DUTIES OF THE COURT

Sec. 711. Exclusive jurisdiction of debtor and property

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located. July 1, 1898, c. 541, Sec. 311, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 906.

Section 3670 of the Internal Revenue Code of 1939 provides:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (in-

cluding any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

Section 1346, Chapter 85, Title 28, U. S. Code provides:

"United States as defendant.

"(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(1) Any civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws, (i) if the claim does not exceed $10,000 or (ii) even if the claim exceeds $10,000 if the collector of internal revenue by whom such tax, penalty or sum was collected is dead or is not in office as collector of internal revenue when such action is commenced; * * * * *"

Section 1491, Chapter 91, Title 28, U. S. Code provides:

"Court of Claims

"Claims against United States generally.

"The United States Court of Claims shall have jurisdiction to render judgment upon any claim against the United States.—

(1) founded upon the Constitution; or
(2) founded upon any Act of Congress; or
(3) founded upon any regulation of an executive department; or
(4) founded upon any express or implied contract with the United States; or
(5) for liquidated or unliquidated damages in cases not sounding in tort. * * * * *"